

Schreiber Foods, Inc. and its workers' compensation insurance carrier, Zurich American Insurance Co. (referred to jointly as "Schreiber" hereafter), ask the Utah Labor Commission to review Administrative Law Judge Marlowe's award of benefits to L.R. under the Utah Occupational Disease Act ("the Act"; Title 34A, Chapter 3, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. 34A-2-102(2) and Utah Code Ann. §34A-2-801(3).

### **BACKGROUND AND ISSUES PRESENTED**

On August 25, 2003, Ms. R. filed an application with the Commission for benefits under either the Utah Workers' Compensation Act or the Utah Occupational Disease Act for medical problems allegedly caused by inhaling ammonia fumes while working at Schreiber on October 30, 2002. Judge Marlowe held an evidentiary hearing on Ms. R.'s claim on April 30, 2004, and then on March 7, 2005, issued a decision awarding occupational disease benefits. Schreiber filed a motion for review of Judge Marlowe's decision on April 6, 2005, and this matter was transmitted to the Commission on May 2, 2005.

In its motion for review, Schreiber contends Ms. R.'s claim should have been adjudicated under the Utah Workers' Compensation Act, rather than under the Utah Occupational Disease Act. Schreiber also contends Ms. R.'s claim is subject to the more stringent prong of the *Allen* test for legal causation. Finally, Schreiber argues that, if Ms. R.'s claim is adjudicated under the Utah Occupational Disease Act, her benefits must be apportioned pursuant to § 34A-3-110 of the Act.

### **FINDINGS OF FACT**

The Commission adopts Judge Marlowe's findings of fact. As relevant to issues raised in Schreiber's motion for review, the facts may be summarized as follows.

On October 30, 2002, while working for Schreiber as a forklift operator, Ms. R. was exposed to ammonia fumes that escaped in the course of maintenance to Schreiber's refrigeration system. Although the concentration of ammonia fumes did not exceed NIOSH/OSHA limits, the concentration was significant and Ms. R. experienced discomfort. She continued working for several hours, frequently traveling through the areas where the ammonia fumes were concentrated.

The next day, Ms. R. sought medical attention for respiratory discomfort. Over the next months, she underwent a series of medical examinations and tests and was ultimately diagnosed with preexisting "reactive airways disease" aggravated by her work-related exposure to ammonia fumes.

### **DISCUSSION AND CONCLUSION OF LAW**

Schreiber argues Ms. R.'s claim should be adjudicated as an accidental injury, rather than as an occupational disease. As Schreiber itself states, Utah law "does not clearly distinguish between events that qualify as industrial accidents and those that qualify as occupational diseases." Nevertheless, § 34A-3-103 of the Occupational Disease Act defines "occupational disease" as "any disease or illness that arises out of and in the course of employment and is medically caused or aggravated by that employment." Because Ms. R.'s reactive airway disease falls within the parameters of the foregoing definition, the Commission finds no error in Judge Marlowe's adjudication of Ms. R.'s claim under the Occupational Disease Act.

Schreiber also argues that, because Ms. R. suffered from a preexisting pulmonary condition, she must meet the more stringent prong of the test for legal causation set out in *Allen v. Industrial Commission*, 729 P.2d 15 (Utah 1986). Assuming without deciding that Ms. R.'s occupational disease claim is subject to the *Allen* test for legal causation, the Commission finds that repetitive exposure to significant levels of ammonia fumes is not typical of everyday nonemployment life, but is instead unusual or extraordinary. Consequently, Ms. R.'s exposure to ammonia fumes at Schreiber satisfies the requirements of legal causation.

Finally, Schreiber contends that Ms. R.'s benefits should be apportioned between work-related and pre-existing conditions pursuant to §34A-3-110 of the Occupational Disease Act. However, Schreiber has submitted no analysis of §110's application to the facts of Ms. R.'s claim. It appears to the Commission that § 110 has no application, since Ms. R.'s occupational disease (reactive airway disease) is the sole cause of her disability.

### **ORDER**

The Commission affirms Judge Marlowe's decision and denies Schreiber's motion for review. It is so ordered.

Dated this 30<sup>th</sup> day of September, 2005.

R. Lee Ellertson, Commissioner